

## § 11.21

this part by ATF Order 1130.7, Delegation Order—Delegation of the Director's Authorities in 27 CFR parts 6, 8, 10 and 11.

*Director.* The Director, Bureau of Alcohol, Tobacco and Firearms, the Department of the Treasury, Washington, DC.

*Exchange.* The transfer of distilled spirits, wine, or malt beverages from a trade buyer to an industry member with other products taken as a replacement.

*Industry member.* Any person engaged in business as a distiller, brewer, rectifier, blender, or other producer, or as an importer or wholesaler of distilled spirits, wine or malt beverages, or as a bottler or warehouseman and bottler, of distilled spirits.

*Product.* Distilled spirits, wine or malt beverages, as defined in the Federal Alcohol Administration Act.

*Retailer.* Any person engaged in the sale of distilled spirits, wine or malt beverages to consumers. A wholesaler who makes incidental retail sales representing less than five percent of the wholesaler's total sales volume for the preceding two-month period shall not be considered a retailer with respect to such incidental sales.

*Return.* The transfer of distilled spirits, wine, or malt beverages from a trade buyer to the industry member from whom purchased, for cash or credit.

*Trade buyer.* Any person who is a wholesaler or retailer of distilled spirits, wine or malt beverages.

[T.D. ATF-74, 45 FR 63258, Sept. 23, 1980, as amended by T.D. ATF-364, 60 FR 20427, Apr. 26, 1995; T.D. ATF-428, 65 FR 52021, Aug. 28, 2000]

### Subpart C—Unlawful Sales Arrangements

#### § 11.21 General.

It is unlawful for an industry member to sell, offer for sale, or contract to sell to any trade buyer, or for any such trade buyer to purchase, offer to purchase, or contract to purchase any products (a) on consignment; or (b) under conditional sale; or (c) with the privilege of return; or (d) on any basis other than a bona fide sale; or (e) if any part of the sale involves, directly or in-

## 27 CFR Ch. I (4–1–03 Edition)

directly, the acquisition by such person of other products from the trade buyer or the agreement to acquire other products from the trade buyer. Transactions involving the bona fide return of products for ordinary and usual commercial reasons arising after the product has been sold are not prohibited.

#### § 11.22 Consignment sales.

Consignment sales are arrangements wherein the trade buyer is under no obligation to pay for distilled spirits, wine, or malt beverages until they are sold by the trade buyer.

#### § 11.23 Sales conditioned on the acquisition of other products.

(a) *General.* A sale in which any part of the sale involves, directly or indirectly, the acquisition by the industry member from the trade buyer, or the agreement, as a condition to present or future sales, to accept other products from the trade buyer is prohibited.

(b) *Exchange.* The exchange of one product for another is prohibited as a sales transaction conditioned on the acquisition of other products. However, the exchange of a product for equal quantities (case for case) of the same type and brand of product, in containers of another size is not considered an acquisition of "other" products and is not prohibited if there was no direct or implied privilege of return extended when the product was originally sold. Industry members may make price adjustments on products eligible for exchange under this paragraph.

#### § 11.24 Other than a bona fide sale.

"Other than a bona fide sale" includes, but is not limited to, sales in connection with which the industry member purchases or rents the display, shelf, storage or warehouse space to be occupied by such products at premises owned or controlled by the retailer.

[T.D. ATF-364, 60 FR 20427, Apr. 26, 1995]

### Subpart D—Rules for the Return of Distilled Spirits, Wine, and Malt Beverages

#### § 11.31 General.

(a) Section 5(d) of the Act provides, in part, that it is unlawful to sell, offer